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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,361	08/06/2003	Eric Stanneck	0113-2	8910
25901	7590	05/27/2004	EXAMINER	
ERNEST D BUFF & ASSOCIATES, LLC 245 SOUTH ST MORRISTOWN, NJ 07960				PHILLIPS, CHARLES E
		ART UNIT		PAPER NUMBER
		3751		

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/634,361	STANNECK, ERIC
Examiner	Art Unit	
Charles E. Phillips	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on ____.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.
4a) Of the above claim(s) 11 is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-8 and 10 is/are rejected.
7) Claim(s) 9 is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/2/03.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: ____ .

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by DeGarie '169.

DeGarie teaches a pool cover 20 having a drain 60 as best seen in Fig 4, any of which are “ in a non-centric portion”. The substance of clause “c” is met by this disposition of weight lines 50 as described in col. 5, lines 5-7.

De Garie provides the specific teaching of the drain “ seal” and “ attachment means” for a flexible hose, in col. 5 lines 4-15 where the seal is 86, attachment 88 and flexible hose 62. This provides full response to claim 4.

Re: claim 7, the weight line 50 comprises a “ pipe filed (sic) with sand” as set forth in col. 4, lines 52-54 of De Garie. As to the “ conical depression” this would be a function of placement methodology if attainable and defines no structure not shown here. Claim 8 is fully met.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim3 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Garie, as applied supra, in view of Zietek.

Taught here in Fig. 1 is a conventional circular shaped above ground swimming pool. To employ the weight scheme 50 of De Garie in this similar environment would have been obvious to the ordinary artisan as the use of the perfecting features of one pool cover in the environment of another would have been *prima facie* obvious to the ordinary artisan.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeGarie, as applied *supra*, in view of Richards.

See the barbed fittings 88 shown used in a pool environment. To employ this common pipe connection expedient in De Garie would have been obvious to the ordinary artisan.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7, 8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Antecedent basis is lacking for claim 7, line 2, " conical depression"; claim 8 " weighted end"; and claim 10, " said right angled projections".

Claim9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10 are, drawn to a pool cover drain, classified in class 4, subclass 498.
- II. Claim II, drawn to a method for draining rainwater, classified in class 4, subclass 661.

The inventions are distinct, each from the other because:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the article could be used absent the clause (c) step of claim 11 and in the absence the rainwater route through the exterior portions of the tubular element.

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Buff on 5/18/04 a provisional election was made with traverse to prosecute the invention of I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claim 11 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Any inquiry concerning this communication should be directed to Charles Phillips
at telephone number 308-1515.

Phillips/DI

May 21, 2004


Charles E. Phillips
Primary Examiner